

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 91-438-C - ORDER NO. 92-75 ✓  
FEBRUARY 5, 1992

IN RE: Application of Business Choice Network, Inc. for a Certificate of Public Convenience and Necessity.	) ORDER DENYING ) PETITION FOR ) REHEARING AND/OR ) RECONSIDERATION
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This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and/or Reconsideration filed on behalf of Southern Bell Telephone and Telegraph Company (Southern Bell) regarding Commission Order No. 91-1134. Southern Bell filed its Petition asking the Commission to rehear and/or reconsider certain portions of Commission Order No. 91-1134.

In support of its Petition, Southern Bell alleges that portions of the Order are not supported by the record, are arbitrary and capricious, are unclear or otherwise in contravention of the laws and constitutions of South Carolina and the United States. Specifically, Southern Bell asks the Commission to rehear and reconsider the Commission's denial of Southern Bell's Motion for a Direct Verdict, the Commission's granting of the Application without necessary information, and that the Commission Order contains insufficient findings and conclusions of law.

Southern Bell contends the Commission erred by denying Southern Bell's Motion for a Directed Verdict. Specifically, Southern Bell argues the Commission should have denied the Application of Business Choice Network, Inc. (BCN or the Company) for the Company's failure to comply with the statutory provisions of S.C. Code Ann. §§58-9-520 (Supp. 1991), 58-9-570 (Supp. 1991), and 58-9-350 (Supp. 1991). The Commission disagrees with Southern Bell. The Commission finds that BCN's Application fully complies with all relevant statutory provisions. Contrary to Southern Bell's argument, §58-9-520 (Supp. 1991) only requires a telephone utility to provide the Commission with thirty (30) days advance notice of its intention to file a new rate or tariff which will affect its general body of subscribers. In the case at bar, BCN seeks a Certificate of Public Convenience and Necessity under §58-9-280 (1976) to operate as a telephone utility in South Carolina. BCN is seeking initial authority to operate as a utility and for the approval of its initial rates and charges; it is not seeking authority to establish new rates for its customers. Accordingly, the Commission determines that §58-9-520 is not applicable.

Likewise, the Commission concludes that §58-9-570 is inapplicable to BCN's application for a Certificate of Public Convenience and Necessity and for the establishment of initial rates and charges. Section 58-9-570 appears under Article V, Chapter 9, Title 58 of the South Carolina Code of Laws. Article V is entitled "Telephone Companies-Changes in Rates." Since BCN is

seeking authority to operate as a telephone utility in South Carolina and authority to charge its initial rates, the Commission concludes that §58-9-570 is inapplicable.

Finally, the Commission determines that §58-9-350 is also not applicable to the facts before us. Section 58-9-350 provides telephone utilities with the right to charge depreciation as an annual operating expense. Alternatively, the Commission may require a telephone utility to charge depreciation as an operating expense. This Commission has not required BCN to submit depreciation as an operating expense. Moreover, despite its ability to so choose, BCN has not elected to charge depreciation as an operating expense. BCN's Application has not violated §58-9-350 by the Company's decision not to submit depreciation as an expense or by the Commission not requiring the Company to submit depreciation as an expense.

As a second ground for rehearing and/or reconsideration, Southern Bell alleges that the Commission erred by granting the Applicant's Certificate of Public Convenience and Necessity without "information clearly required by its own regulations and laws of this State." According to Southern Bell, BCN should have submitted information to the Commission as required under S.C. Code Ann., §§58-9-520, 58-9-570, 58-9-350, and PSC Regulation 103-834. As noted previously, the Commission has determined that the requirements of the cited statutory sections are inapplicable where a telecommunications reseller is applying for a certificate of public convenience and necessity. Likewise, the Commission

concludes that 26 S.C. Regs. 103-834 is also inapplicable where a telecommunications reseller is applying for a certificate of public convenience and necessity. Although the regulation states that it shall apply for "establishment or adjustment of rates and charges," the Commission holds that the filing requirements of the regulation do not apply in cases where, as here, a reseller submits a tariff which is competitive with the rates of AT&T<sup>1</sup> because many of the various factors contained in R.103-834 are inapplicable.<sup>2</sup> Accordingly, the Commission denies the Petition for Rehearing and/or Reconsideration on this issue.

Lastly, Southern Bell claims that Order No. 91-1134 contains defective findings, as "they contain not one shred of support." Additionally, Southern Bell takes issue with the number of findings and their "obvious simplicity," which, in Southern Bell's opinion, are insufficient to support the "volume" of conclusions of law which follow. The Commission finds that Order No. 91-1134 contains sufficient findings to support its conclusions. While Order No. 91-1134 may have only delineated 5 statements as "findings of fact," those findings are sufficient to support the conclusions which follow. The findings are based on the evidence of record before the Commission. And the conclusions are the usual legal requirements which BCN must adhere to in order to be a telecommunications reseller in South Carolina. The Commission is

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1. See, Order No. 84-622, Docket No. 84-10-C (August 2, 1984).

2. In any event, BCN did submit financial exhibits with its Application.

unaware of any requirement which dictates a specific number of findings of fact must be made to support a specific number of conclusions of law. Accordingly, the Commission holds that its findings of fact and conclusions of law fully comply with S.C. Code Ann. §1-23-350 (1976).

IT IS THEREFORE ORDERED:

1. That the Petition for Rehearing and/or Reconsideration filed on behalf of Southern Bell in the instant matter is hereby denied.

2. That Order No. 91-134 shall remain in effect as originally promulgated.

3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)